

**UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARING AND APPEALS**

The Secretary, United States Department of)
Housing and Urban Development,)
)
Charging Party,)
)
On behalf of **NAME REDACTED** and her)
minor child,)
)
Complainants,)
)
v.)
)
Lakeview Avenue, LLC, Artur Pengu, and)
Elsaz Pengu,)
)
Respondents.)
_____)

OHA Case No.

FHEO Case No. 02-22-0432-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

NAME REDACTED, on behalf of herself and her minor child (“Complainants”), filed a complaint with the U.S. Department of Housing and Urban Development (“HUD” or the “Department”) on January 18, 2022 (the “Complaint”). Complainants allege that Lakeview Avenue, LLC (“Respondent Lakeview”), Artur Pengu (“Respondent Artur Pengu”), and Elsz Pengu (“Respondent Elsz Pengu”) (collectively, “Respondents”) violated the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.* (the “Act”), on the basis of disability when they failed to grant Complainants’ reasonable accommodation requests for an assistance animal and subjected Complainants to retaliation for requesting a reasonable accommodation.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(2). The Secretary has delegated to the General Counsel, who has retained and re-delegated to the Regional Counsel, the authority to issue such a Charge following a determination of reasonable cause. 76 Fed. Reg. 42462, 42465 (July 18, 2011). The Regional Director of the Office of Fair Housing and Equal Opportunity (“FHEO”) for New York/New Jersey, on behalf of the Assistant Secretary for FHEO, has determined after investigation that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. §§ 3610(b) and 3610(g)(2).

II. LEGAL AUTHORITY AND FACTUAL BASIS FOR THIS CHARGE

Based on HUD's investigation of the allegations contained in the HUD Complaint and the Determination of Reasonable Cause and No Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

A. LEGAL AUTHORITY

1. It is unlawful to discriminate against any person in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability. 42 U.S.C. § 3604(f)(1)(A); 24 C.F.R. §§ 100.50(b)(1) and 100.202(a)(1).

2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of (1) that person, or (2) a person residing in or intending to reside in that dwelling after it is rented or made available, or (3) any person associated with that person. 42 U.S.C. § 3604(f)(2); 24 C.F.R. § 100.202(b).

3. Discrimination under 42 U.S.C. § 3604(f)(1) and (2) includes the refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204(a).

4. It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act, including Section 804. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b) and (c)(2).

B. PARTIES AND SUBJECT PROPERTY

5. Complainant's minor child is a person with a disability, as defined by the Act. 42 U.S.C. § 3602(h).

6. Complainant and her minor child are aggrieved persons as defined by 42 U.S.C. § 3602(i).

7. Respondent Lakeview is the owner of a six (6)-unit multifamily dwelling, located at **ADDRESS REDACTED**, Rensselaer, New York (the "Subject Property"). Respondents Artur and Elsz Pengu are members of Lakeview Avenue, LLC.

8. The Subject Property is a "dwelling," as defined by the Act, 42 U.S.C. § 3602(b).

9. At all times relevant to the Charge, Complainant and her minor child resided on the first floor of the Subject Property.

C. FACTUAL ALLEGATIONS

10. Complainant's minor child has been medically diagnosed with conditions (mental health). Her treatment professional supports the use of an assistance animal to ameliorate the symptoms of the disability.

11. Complainant entered a one (1) year lease on October 1, 2019. On or about October 2, 2020, having not been renewed for another term, Complainant's lease converted to a month-to-month lease by operation of the lease terms.

12. In June 2021, Complainant sought permission to keep a dog in her unit to benefit her minor child. Respondent Artur denied the request because the Subject Property does not allow pets.

13. In September 2021, Complainant again sought permission for a dog in her unit. Respondent Artur also denied this request.

14. In September 2021, Respondent Artur temporarily repaired a water leak in Complainant's bathroom ceiling by diverting the water into a bucket in the furnace room, which Respondents emptied every few days.

15. On November 9, 2021, Complainant verbally requested a reasonable accommodation (the "First Reasonable Accommodation Request") for an assistance animal for her minor child. Complainant provided Respondent Artur with a letter from her minor child's doctor, which explained her minor child's disability-related need for an assistance animal.

16. Respondent Artur denied the First Reasonable Accommodation Request, alleging that a tenant residing in a unit directly above Complainant's unit had an allergy to dogs.

17. On January 1, 2022, Complainant made a written request for a reasonable accommodation (the "Second Reasonable Accommodation"), that stated, in part, that she and her minor child have the legal right to keep an assistance animal under applicable laws.

18. By text message dated January 5, 2022, Respondent Artur denied the Second Reasonable Accommodation Request and wrote:

I recognize you have a right to the dog, but I also recognize my right as your landlord to refuse having one in my building. I'm so sorry but I can't permit a dog on the property and I can't make an exception for one resident. I understand your need to get one, but if you are set in stone about it, you may have to look for a new place. Sincerest apologies.

19. Additionally, Respondent Artur offered Complainant an available unit in his pet-friendly building located approximately ten (10) minutes away from the Subject Property. Complainant rejected this offer because the pet-friendly building was in a different school district and relocating would have imposed an undue burden on Complainant and her minor child.

20. By text message dated February 10, 2022, one month after the Second Reasonable Accommodation Request, Respondent Artur told Complainant that she and her minor child would have to vacate the Subject Property by April 10, 2022 so that he could address a leak in the bathroom in her unit. Respondent Artur also wrote “after time expired I do eviction.”

21. Respondent Artur also provided Complainant with a letter, dated February 10, 2022, that states:

I know you have been having issues with your bathroom ceiling and I came in to fix the small leak recently. I moved the leak to the furnace so I could contain it in a better environment but the leak in your apartment originated from a different apartment. Therefore, I am giving you two months to situate yourself in another apartment so I can open the ceiling and repair the root of the problem. I completely understand that this is an inconvenience for you, but for the betterment of your living conditions and other tenants, I must fix this before it becomes a bigger problem.

22. Respondent did not give Complainant the option to move back into her unit after completion of repairs. Apart from a short-term disruption in water service in June 2022, other tenants at the Subject Property were unaffected by the repairs.

23. On April 1, 2022, Complainant vacated the Subject Property and moved to another apartment within her minor child’s school district that was \$200.00 more per month to rent than the unit at the Subject Property.

III. FAIR HOUSING ACT VIOLATIONS

1. As described in the paragraphs above, Respondents discriminated against Complainants in the sale or rental of a dwelling based on disability when they refused to grant their request for a reasonable accommodation and made housing unavailable to Complainants. 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B); 24 C.F.R. §§ 100.202(a) and 100.204(a).

2. As described in the paragraphs above, Respondents discriminated against Complainants in the terms, conditions, or privileges of the rental of a dwelling based on disability when they refused to grant their request for a reasonable accommodation by declining to permit them to have their assistance animals. 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); 24 C.F.R. §§ 100.202(b) and 100.204(a).

3. As described in the paragraphs above, Respondents violated the Act by interfering with Complainants’ exercise of rights protected by the Act and by retaliating against Complainants for engaging in activity protected by the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(b).

IV. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1), (f)(2), and 3604(f)(3)(B) of the Act, and requests that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate Sections 804(f)(1) and (f)(2), as defined by Section 804(f)(3)(B), and Section 818 of the Fair Housing Act, 42 U.S.C. §§ 3601-3619;

2. Enjoins Respondents, their agents, officers, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of disability against any person in any aspect of the sale, rental, use, or enjoyment of a dwelling, interfering with any person in the exercise of any right protected by the Act, and/or retaliating against any person for engaging in any activity protected by the Act;

3. Mandates Respondents, their agents, employees, officers, and successors, and all other persons in active concert or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

4. Awards such monetary damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate Complainant for damages caused by Respondents' discriminatory conduct;

5. Assesses a civil penalty against Respondents for each violation of the Act pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and

6. Awards any additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,



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